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November 9, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 22, 2006

Case Number: TSO-0367

This Decision concerns the eligibility of XXXXXXXXXX (the Individual) for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization. For the reasons detailed below, it is my decision that the Individual is eligible for access authorization.

I. APPLICABLE REGULATIONS

The regulations governing an individual's eligibility for access authorization (also referred to as a security clearance) are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* § 710.21(b)(3). At a hearing, the burden is on

the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, *i.e.*, that access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." *Id.* § 710.27(a).

II. BACKGROUND

The Individual has worked at DOE and held a clearance since 1988. In 1988, the Individual suffered a brief psychotic episode. In 1999, she suffered another such episode. In both cases, she reported the incidents to DOE and received treatment.

In February 2005, the Individual was arrested for Driving While Intoxicated (DWI). As a result, in July 2005, the local security office interviewed the Individual. DOE Ex. 5. The Individual stated that she had not consumed alcohol since the arrest and did not intend to do so in the future. *Id.* at 52-53. She stated that she had stopped socializing with people who drink and began volunteering for a community organization. *Id.* at 43-44. As for the legal aspect of the arrest, the Individual stated that she had received a deferred sentence, subject to her completion of certain requirements, including a psychological evaluation, community service, and drug and alcohol training. *Id.* at 23. The Individual indicated that she had already obtained a psychological evaluation on her own. *Id.* at 24. The local security office referred the Individual to a DOE consulting psychiatrist (the DOE Psychiatrist) for an evaluation.

In an October 2005 report, the DOE Psychiatrist diagnosed the Individual with two conditions set forth in the Diagnostic and Statistical Manual IV (Text Revision) published by the American Psychiatric Association (the DSM-IV-TR). DOE Ex. 3. The DOE Psychiatrist diagnosed the Individual with (i) alcohol abuse, in early remission, and (ii) borderline personality disorder. The DOE Psychiatrist opined that there was not adequate evidence of reformation and rehabilitation.

In a February 2006 Notification Letter, the DOE stated that derogatory information created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J) and 10 C.F.R. § 708.8(h) (Criterion H). DOE Ex. 1. The Notification Letter cited the DOE Psychiatrist's diagnoses.

In response to the Notification Letter, the Individual requested a hearing. In her request, the Individual did not dispute the diagnosis of alcohol abuse. Instead, she stated that she recognized that she had a problem and had stopped drinking:

I'm not making any excuses for my behavior, but what I am saying is that I realized my problem and got the help I needed to fix it. I do not drink anymore, nor do I hang around with friends that do. I have changed my entire lifestyle because of this and am proud to have done it.

Individual's February 2006 Letter at 2. The Individual did dispute the diagnosis of borderline personality disorder.

The request for a hearing was forwarded to the Office of Hearings and Appeals (OHA), and I was appointed the hearing officer.

III. THE HEARING

The DOE counsel presented one witness: the DOE Psychiatrist. In addition to her own testimony, the Individual presented eight witnesses: her counselor, her boyfriend, a friend, two co-workers, and three former or current supervisors. The DOE counsel questioned all of the witnesses to elicit relevant information, favorable or unfavorable. These questions contributed to a full, well-developed record.

A. The Individual

Although the Individual did not challenge the diagnosis of alcohol abuse, she did disagree with the Notification Letter's characterization of two prior incidents as alcohol-related. She testified that in both incidents - which occurred in the 1980s - she had had little or no alcohol.

The Individual testified that she has not had anything to drink since the February 2005 arrest and intended to maintain that abstinence. Tr. at 211. As for the DWI, she stated: "I thank God for it. It's caused me ... a problem, but you know what, I'm a better person." Tr. at 213. She testified that her life is now stable, and she cited her five-month old relationship with her boyfriend. Tr. at 217. With respect to the issue of counseling, the Individual testified that she had completed the court-ordered requirements. She testified that she had recently begun individual counseling for other issues. Tr. at 214.

The Individual testified that she did not believe that she had a borderline personality disorder. She attributed a 1988 psychotic episode to the physical and emotional trauma of a car accident and to related medication. Tr. at 208-09. She attributed a 1999 episode to stress and grief related to the deaths of her parents in 1995 and 1999. She testified that she served as the sole care-giver for her parents over a protracted period. Tr. at 209-10.

The Individual testified that the counseling that she was receiving was very helpful. She testified: "[The counselor's] helping me understand me . . . my childhood, why my brothers and sisters are the way they are." Tr. at 214. She stated that she plans to see the counselor for at least another year. Tr. at 214-15. She testified that the outcome of the administrative review proceeding would not affect that decision. She testified that "I'm happy with my life. ... I'm seeing [the counselor] ... for me, not for you." Tr. at 217.

B. The Individual's Counselor

The Individual's counselor testified by telephone. The Individual's counselor is a licensed marriage and family therapist. Tr. at 182. She agreed with the diagnosis of alcohol abuse but not with the diagnosis of borderline personality disorder. She attributed the psychotic episodes to alcohol abuse, Tr. at 192, and she gave a current diagnosis as an adjustment disorder, Tr. at 199. She testified that, as long as the Individual did not drink, there would be no more psychotic episodes. Tr. at 192-198. The counselor stated that the Individual was "very sincere" and "very committed" to therapy. Tr. at 184.

C. The Individual's Boyfriend

The Individual's boyfriend testified that he sees the Individual almost every evening and spends weekends at her house. Tr. at 159. He described their relationship as "very committed." Tr. at 159. He stated that he has never seen her consume alcohol and that he does not consume alcohol. Tr. at 159-60. He described their relationship as "excellent" and stated that they were considering marriage. Tr. at 160, 164. He described her as "very level-headed." Tr. at 174. He stated that she is trying to persuade him to stop smoking, telling him "I feel a hundred percent better since I stopped drinking." Tr. at 179.

D. The Individual's friend

The Individual's friend testified that she has known the Individual since 1999. They were roommates for two and one-half years, which included the time of the DWI arrest. The Individual's friend stated that the Individual was "mad" and "upset" at herself about the DWI. Tr. at 147. The Individual's friend stated that the Individual "hasn't had a drop to drink since the incident." Tr. at 148. The Individual's friend stated that the Individual is happy that she quit, she feels much better, and her life has changed for the better. Tr. 149-150. Finally, the Individual's friend testified that the Individual was a stable person. The friend stated that her daughter - who was a pre-adolescent at the time - lived with them: "I would not put my daughter in an unstable or unsafe environment." Tr. at 154-55.

E. Co-worker No. 1

Co-worker No. 1 testified that she has known the Individual for 10 years. Tr. at 135. The co-worker stated that the Individual "performs quite admirably" and that she was "organized in her thoughts and actions." Tr. at 136, 138. The co-worker stated that alcohol is available at some work-related social events, but that she has never seen the Individual drink. Tr. at 140.

F. Co-worker No. 2

Co-worker No. 2 has also known the Individual for ten years. Tr. at 124. The co-worker stated that the Individual told her that she had stopped drinking. Tr. at 130. Although she has seen the Individual in a number of settings where alcohol is available, the co-worker has not seen the Individual drink. Tr. at 130. She stated that the job they do is very stressful and that the Individual has "exceptional judgment." Tr. at 128.

G. The Individual's first-line supervisor

The Individual's first-line supervisor testified that he has known the Individual for ten years. Tr. at 113. He stated that he has never seen her drink excessively and has not seen her consume any alcohol since the DWI. He stated that she has "always been honest," Tr. at 120, and displays "good judgment," Tr. at 115. He stated that he "can rely on her anytime." Tr. at 117.

H. The Individual's third-line supervisor

The Individual's third-line supervisor testified that she had never seen the Individual impaired and that the Individual regretted the DWI. Tr. at 103-05. The supervisor further stated that the Individual's day-to-day performance is "the best." Tr. at 104. The supervisor stated that she has seen the Individual in stressful situations and that she has handled them well. Tr. at 98.

I. The Individual's former supervisor

The Individual's former supervisor testified that he has known the Individual for about 10 years. Tr. at 77. He stated that he never saw the Individual drink excessively. He was her supervisor at the time her father died and stated that she went through a "very, very difficult grieving process." Tr. at 85. He rates her performance as the best, "especially in a crisis." Tr. at 87. He stated: "[W]hen you need somebody on your team to deal with a crisis, then that's the lady that - that you want to have in the middle of the action with you." Tr. at 90.

J. The DOE Psychiatrist

The DOE Psychiatrist testified twice - once at the beginning of the hearing and once at the end of the hearing. During his initial testimony, he discussed his report. He explained the basis for his diagnoses of alcohol abuse and borderline personality disorder. He stated that because of the existence of the two conditions, he had recommended one year of abstinence, treatment, and counseling, beginning from the time of his interview. Tr. at 63-65.

After listening to all of the testimony at the hearing, the DOE Psychiatrist testified again. The DOE Psychiatrist discussed the testimony in detail and revised his opinion.

With respect to his diagnosis of alcohol abuse, the DOE Psychiatrist largely focused on the issue of reformation or rehabilitation.¹ Based on the testimony that the Individual was committed to sobriety, had been abstinent for 18 months, and was in counseling, the DOE Psychiatrist concluded that the

¹The DOE psychiatrist did address the Individual's testimony that he mistakenly characterized two incidents as alcohol-related. Based on the additional information she provided, he concluded that they were probably not alcohol-related.

Individual had demonstrated adequate evidence of reformation or rehabilitation. Tr. at 233-36.

With respect to his diagnosis of borderline personality disorder, the DOE Psychiatrist concluded that the Individual did not currently have a mental condition that may cause a defect in judgment or reliability. The DOE Psychiatrist discussed the testimony regarding the Individual's stable lifestyle and opined that either she had never had a borderline personality disorder or, if she did, "she's, with time, outgrown it or matured beyond it." Tr. at 226. He testified that the alternate explanation for the two psychotic episodes was "brief psychotic episodes with marked stressors." Tr. at 229. He opined that, given the passage of time since the episodes occurred (one in 1988 and the other in 1999) and the Individual's stable lifestyle, there was "a very low probability" of recurrence. Tr. at 236-37.

IV. APPLICABLE STANDARD

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). In that case, the individual has the burden to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a).

V. ANALYSIS

It is the view of the DOE Psychiatrist that the Individual has resolved the concerns cited in the Notification Letter. The DOE Psychiatrist has revised his diagnoses: he believes that the Individual has demonstrated adequate evidence of reformation and rehabilitation from alcohol abuse and that she does not

currently suffer from a condition that could cause a defect in judgment and reliability.

The testimony supports the DOE Psychiatrist's view that the Individual has demonstrated adequate evidence of reformation and rehabilitation from alcohol abuse. I am convinced that, at the time of the hearing, the Individual had been abstinent for 18 months and was committed to abstinence in the future. The Individual and others presented detailed and convincing testimony on this issue. See, e.g., Tr. at 148, 159-60, 211, 213, 217. The Individual has changed her lifestyle: she no longer socializes in bars, she is pursuing other interests in her spare time, and she is enjoying a stable lifestyle. I was also convinced that the Individual is committed to individual counseling. The Individual testified with great feeling about her relationship with her counselor and the benefits she is receiving from the counseling. Tr. at 214-17. The Individual's counselor corroborated this testimony. Tr. at 184.

The testimony also supports the DOE Psychiatrist's view that the Individual does not currently have a mental condition that may cause a defect in judgment and reliability. Although the DOE Psychiatrist and the Individual's counselor differ on some points, both agree that the Individual does not currently suffer from borderline personality disorder. See, e.g., Tr. at 199, 226. Both professionals believe that it is unlikely that the Individual will experience psychotic episodes in the future, citing the circumstances surrounding those episodes, the passage of time, and the Individual's current, stable outlook and lifestyle. See, e.g., 192, 198, 236-37. The record provides ample support for that analysis.

As the foregoing indicates, the Individual suffered from alcohol abuse but has demonstrated adequate evidence of reformation and rehabilitation. Moreover, the Individual does not currently have a mental condition that may cause a defect in judgment or reliability.

VI. CONCLUSION

The Individual has resolved the Criteria J and H concerns set forth in the Notification Letter. Therefore, restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should be restored. Any party

may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: November 9, 2006